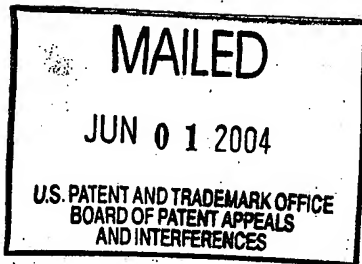


UNITED STATES PATENT AND TRADEMARK OFFICE



BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID R. DAVIS
and
MICHAEL R. FLANNERY

Application No. 10/034,110

ORDER RETURNING UNDOCKETED APPEAL

This application was electronically received at the Board of Patent Appeals and Interferences on May 4, 2004. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith electronically returned to the examiner. The matters requiring attention prior to docketing are identified below.

An examination of the file reveals that an Appeal Brief was filed on November 10, 2003 which requested that any fees be charged to Deposit Account No. 50-0439. The Patent and Trademark Office records reflect that the \$320 Appeal Brief fee has not been charged.

In addition, the Notice of Appeal filed September 5, 2003, states that "[a]ppellants hereby appeal to the Board of Patent Appeals and Interferences from the decision dated July 1, 2003, of the Examiner rejecting claims 1, 3-6, 32-34 and 36-51." The "Claims on Appeal" section appearing on page 2 of the Appeal Brief filed November 10, 2003 states that "[t]he rejected claims 1, 3-6, 32-34 and 36-51 are the subject of the present appeal." However, the grounds of rejection appearing in the Final Rejection filed July 1, 2003 and the Examiner's Answer mailed January 20, 2004 list the rejections as follows:

Claims 1, 3-6, 32-34 and 36-41 are rejected under 35 U.S.C. 102(e) as being anticipated by Behl (US 6,185,097 B1); and

Claims 42 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Behl in view of Papa et al. (US 6,175,490 B1).

Neither the Final Rejection nor the Examiner's Answer appears to discuss the rejection of claims 44-51. Appropriate correction is required.

Accordingly, it is

ORDERED that the application is electronically returned to the examiner:

Application 10/034,110

1. for charging the \$320 Appeal Brief fee to appellants' Deposit Account No. 50-0439 as requested in the cover letter to the Appeal Brief filed November 10, 2003;
2. for a determination regarding the status of claims 44-51;
3. for written notification to appellants regarding the action taken; and
4. for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: 

DALE SHAW

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